IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10376 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAILESHBHAI HARIBHAI PATEL

Versus

CHAUDHARY SHANTARAM GANGARAM

Appearance:

1. Special Civil Application No. 10376 of 2003

MR GM JOSHI for Petitioner No. 1

MR SHANTARAM G CHAUDHARY :: In-person for self and Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 27/09/2004

ORAL JUDGEMENT

The petitioner challenges the order dated 1st November, 2002 made by the Labour Court, Ahmedabad in Recovery Application No. 994 of 2000 and the Recovery Certificate dated 5th July, 2003 issued in favour of the respondents [hereinafter referred to as, "the Workmen"] in the sum of Rs. 97,506=40p.

The workmen were engaged by one Messrs. Ramesh Textile. According to the workmen, they were employed by the said M/s. Ramesh Textile in the year 1980 and their service was wrongfully terminated in the year 1982. Feeling aggrieved, the workmen raised industrial dispute which was referred to the Labour Court, Ahmedabad and registered as Reference [LCA] No. 535 of 1983. The claim made by the workmen came to be allowed by the judgment and award dated 21st April, 1984. The said Award having been made ex parte the petitioner, acting on behalf of the said M/s. Ramesh Textile, moved application to set-aside the ex parte award and to restore the Reference. The said application came to be allowed. The reference was restored. After restoration, by the judgment and award dated 14th August, 1996, the claim of the workmen was allowed by the Labour Court. The workmen were ordered to be reinstated in service and were directed to be paid backwages. As the award has not been implemented, the workmen have filed several recovery applications. One of the said recovery applications being Recovery Application No. 994 of 2000 was filed against the said M/s. Ramesh Textile, Shri Shaileshbhai Bhaveshbhai Textile and Messrs. Neeky Plastic. The petitioner herein, Shri Shaileshbhai Haribhai Patel is one of the partners in the aforesaid M/s. Neeky Plastic. The petitioner appeared before the Labour Court and contested the Recovery Application No. 994 of 2000. It was submitted that no firm in the name of M/s. Shaileshbhai Bhaveshbhai Textile exists. It was also submitted that the workmen were employed by M/s. Ramesh Textile and M/s. Ramesh Textile alone can be held responsible for implementation of the Award passed by the Labour Court. Neither M/s. Neeky Plastic nor the petitioner-Shaileshbhai Haribhai Patel can be made liable to discharge liability under the said Award. The said contention was accepted by the Labour Court. By impugned order dated 1st November, 2002, the said Recovery Application No. 994 of 2000 was rejected as against M/s. Neeky Plastic. Consequently, the impugned recovery certificate has been issued against M/s. Ramesh Textile through the petitioner Shaileshbhai Haribhai Patel and against M/s. Shaileshbhai Bhaveshbhai Textile. Feeling aggrieved, the petitioner has preferred the present petition.

Learned advocate Mr. Joshi has submitted that M/s. Ramesh Textile was the only party in the aforesaid Reference (LCA) No. 535 of 1983. The petitioner was not connected with the said business in any manner. However, the proprietor of the said M/s.Ramesh Textile-Shri Rameshbhai Chhaganbhai Patel has emmigrated to United States of America. The said Shri Rameshbhai Patel happens to be the uncle of the present petitioner. The said Shri Rameshbhai had given power of attorney to the petitioner. The petitioner had appeared before the Labour Court in his capacity as constituted attorney of the said Shri Rameshbhai Patel and not as the successor or transferee of the business of M/s. Ramesh Textile. The petitioner, therefore, cannot be held personally liable for the dues of the said M/s. Ramesh Textile. Mr. Joshi has submitted that the Labour Court having recorded finding in favour of the petitioner, has erred in rejecting the recovery application as against the present petitioner.

The petition is contested by the workmen. Mr. Chaudary has submitted that it is not true that the petitioner has no connection with the business of M/s. Ramesh Textile. He has submitted that the proprietor of M/s. Ramesh Textile Shri Rameshbhai Patel and the father of the petitioner Shri Haribhai Patel are real brothers. The petitioner has started the business of M/s. Neeky Plastic in the same shed where M/s. Ramesh Textiles had its business. The petitioner appeared before the Labour Court in the Reference proceedings. It was the petitioner who made application for restoration of the Reference, after it was decided ex parte in the year 1984. Mr. Chaudhary has submitted that at no point of time, the petitioner disclosed to the Labour Court that he was acting as a constituted attorney of the proprietor Shri Rameshbhai Patel. No power of attorney was produced in the proceedings before the Labour Court. The petitioner, therefore, cannot now disown his liability to implement the award passed by the Labour Court.

The power of attorney relied upon by Mr. Joshi cannot be said to be a valid document as it is executed in U.S.A but the same has not been registered before the registering authority in Ahmedabad where it is sought to be used.

On perusal of the record, it appears that the Reference [LCA] No. 535 of 1983 was preferred against M/s. Ramesh Textile alone. The Award too has been passed against M/s. Ramesh Textile. Hence, unless it is

established that the petitioner had any interest in the business of the said M/s. Ramesh Textile or is its successor, the Award passed in the reference cannot be executed against the petitioner. There is nothing on the record to suggest that the petitioner was in any way connected with the business of M/s. Ramesh Textile. On the contrary, Mr. Joshi has produced certificate issued under the Shops & Establishments Act to establish that the business of M/s. Ramesh Textile was a proprietary business of the aforesaid Mr. Rameshbhai C. Patel. Further, because the petitioner happens to be the nephew of the proprietor Shri Rameshbhai Patel, or because the petitioner started his business of M/s. Neeky Plastic in the same shed where the said M/s. Ramesh Textile had its business, after the closure of the said M/s. Ramesh Textile, the petitioner cannot be bound by the award passed against M/s. Ramesh Textile. It is true that the power of attorney on which the petitioner had acted is not a valid document. The said power of attorney would not have a binding effect. But the petitioner's appearing before the Labour Court and getting the reference restored in itself would not make the petitioner liable for the implementation of the award or for the dues of the said M/s. Ramesh Textile. Even the Labour Court has, by impugned order recorded that the petitioner-Shri Shaileshbhai Haribhai Patel was not a party to the reference, nevertheless, the recovery certificate has been issued against the petitioner. The Labour Court has observed that the aforesaid Recovery Application No. 994 of 2000 was earlier decided ex parte. On 20th June, 2000, M/s. Neeky Plastic preferred Misc. Application No. 173 of 2000 for restoration of the Recovery Application which came to be granted. Hence, though the finding has been recorded in favour of the petitioner herein, no relief has been granted to the petitioner.

I am of the view that the Labour Court has erred in not granting relief to the present petitioner. Once the Recovery Application No. 994 of 2000 was restored, the entire matter was at large. Besides, in Recovery Application No. 994 of 2000, as the title discloses, initially, M/s. Ramesh Textile, Neeky Plastic and M/s. Shaileshbhai Bhaveshbhai Textile were impleaded as party respondents. However, later on in Recovery Application, the petitioner appears to have been joined personally as if he represented M/s. Ramesh Textile. The petitioner, therefore, had no cause of action to challenge the order passed on 20th June, 2000. In so far as petitioner is concerned, the cause of action arose when he was personally impleaded and when the relief was refused to

him and when the impugned recovery certificate came to be issued against him. In my view, the Labour Court ought not to have refused the relief to the petitioner because the application for restoration was made by M/s. Neeky Plastic and not by the petitioner.

In above view of the matter, the petition deserves to be allowed. The petitioner not being a party to the Reference, the workmen do not have claim for recovery against the petitioner personally. The Recovery Application No. 994 of 2000 filed by the workmen before the Labour Court, Ahmedabad stands rejected against the present petitioner. The impugned Recovery Certificate dated 5th July, 2003 be accordingly modified. Rule is made absolute in the above terms. The parties shall bear their own costs.

{Miss R.M Doshit, J.}

Prakash*